

STATE TAX COMMISSION

Harlem River Consumers Cooperative, Inc. having filed petition for redetermination of deficiencies under Article 9-A of the tax law for fiscal years ended March 31, 1967 through March 31, 1971, inclusive, and a hearing having been held on June 9, 1972 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at the office of the State Tax Commission, 80 Centre Street, New York City, at which hearing Cora T. Walker, Esq., of counsel and Venus Harris, store coordinator, appeared personally and testified on behalf of the taxpayer, and the record having been duly examined and considered by the State Tax Commission,

(1) The taxpayer was incorporated in New York State on February 15, 1967 pursuant to Article 2 of the Cooperative Corporations Law, with an authorized capital stock of \$500,000, consisting of 100,000 shares with a par value of \$5 each. The bylaws of the corporation provide that dividends on capital stock may be paid at a rate determined by the board of directors and patronage dividends shall be paid on recorded sales.

(2) The corporation organized and operated a retail super-market in New York City. The financial statement of the corporation for the fiscal year ended April 4, 1970 indicates that the board of directors declared a stock dividend of 5% payable from the net earnings of the prior year amounting to \$15,297. A patronage dividend of 3% was also declared.

(3) Based on information submitted, the Corporation Tax Bureau issued notices of deficiency on November 15, 1971 for minimum tax of \$25 for fiscal year ended March 31, 1967 and minimum tax of \$43.75 for fiscal year ended March 31, 1968. For the subsequent three years, notices of deficiency were issued based on capital as follows:

	<u>FYE</u> <u>3/31/69</u>	<u>FYE</u> <u>3/31/70</u>	<u>FYE</u> <u>3/31/71</u>
Total capital	\$171,913.00	\$252,413.50	\$109,054.00
Tax at 1.25 mills	214.89	315.52	
Tax at 1.34 mills			146.13

(4) Timely petition for redetermination of deficiencies was filed.

(5) Section 185 of Article 9 of the tax law reads in part:

"1. For the privilege of exercising its corporate franchise in this state every farmers', fruit growers' and other like agricultural corporations organized and operated on a co-operative basis * * * shall annually pay, in advance, an annual tax * * *."

(6) Section 209 of Article 9-A of the tax law reads in part:

"1. For the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state * * * every domestic or foreign corporation, except corporations specified in subdivision four of this section, shall annually pay a franchise tax * * *."

"4. Corporations liable to tax under sections one hundred eighty-three to one hundred eighty-six * * * shall not be subject to tax under this article."

(7) Sections 1.2 and 1.3 of Ruling of the State Tax Commission dated March 14, 1962 read in part:

"1.2 Definition of Taxpayer. The term 'taxpayer' means any corporation which is subject to the tax imposed by Article 9-A * * *."

"1.3 Definition of Corporation. The term 'corporation' includes an entity created as such under the laws of * * * any state * * * which provides a medium for the conduct of business and the sharing of its gains. * * * The term 'corporation' does not include a membership or other nonstock corporation unless it is doing business for profit."

The State Tax Commission hereby

DECIDES:

(A) Harlem River Consumers Cooperative, Inc. is a stock corporation which does not qualify for taxability under Section 185 of Article 9 of the tax law since it is not a farmers', fruit growers' or other like agricultural cooperative, but is a consumers' cooperative. It is therefore subject to tax under Article 9-A pursuant to Section 209 of the tax law and Sections 1.2 and 1.3 of Ruling of the State Tax Commission.

(B) The notices of deficiency issued on November 15, 1971 are affirmed together with interest due in accordance with the provisions of Section 1084 of Article 27 of the tax law.

Dated: Albany, New York

this 8th day of December 1972.

STATE TAX COMMISSION



President



Commissioner



Commissioner